

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

NEVA PETT,

Civil No. 06-6294-HO

Plaintiff,

ORDER

v.

BROOKS BROTHERS, INC., a
Delaware Corporation, et al.,

Defendants.

Among other claims, the complaint contains state and federal law claims of disparate treatment age discrimination and retaliation. Defendants filed a motion for partial summary judgment on these claims. Plaintiff filed a motion to strike portions of defendants' reply brief in which defendants purport to "move to strike" portions of two declarations submitted by plaintiff.

Plaintiff's Motion to Strike

The portions of defendants' reply brief targeted by

plaintiff's motion to strike are construed as objections to plaintiff's evidence, rather than as motions. So construed, statements of Rick Barkholtz and Barbara Lofton (nka Barbara Escutia) contained in the Sprague and Marlow declarations are not hearsay. Fed. R. Evid. 801(d)(2)(D).

Defendants' Motion for Partial Summary Judgment

The following facts are undisputed. In 1999, defendants hired plaintiff, at the age of 51, to work at defendants' retail store in Woodburn, Oregon. Defendants terminated plaintiff's employment on October 18, 2005.

Defendants argue that plaintiff fails to create genuine issues of fact that she opposed age discrimination, or that defendants terminated her employment because of her age or opposition to age discrimination. Viewed in the light most favorable to plaintiff, the evidence is sufficient to permit a reasonable factfinder to conclude that plaintiff opposed age discrimination. Plaintiff stated that on March 29, 2005, she asked Lofton, the store manager, whether Lofton was harassing plaintiff because of her age. A reasonable factfinder could also conclude from Lofton and Barkholtz's statements, recounted respectively in the Marlow and Sprague declarations, that the stated reason for termination, insubordination, is manufactured and false, and a pretext for age discrimination or retaliation for opposition to age discrimination.

Conclusion

Based on the foregoing, plaintiff's motion to strike [#89] is denied, and defendants' motion for partial summary judgment [#29] is denied.

IT IS SO ORDERED.

DATED this 31st day of March, 2008.

s/ Michael R. Hogan
United States District Judge